

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CUONG HUY DAO,

Plaintiff,

v.

P. TABOR, et al.,

Defendants.

No. 2: 22-cv-0846 KJN P

ORDER

Plaintiff is a state prisoner, proceeding without counsel, with a civil rights action pursuant to 42 U.S.C. § 1983. Pending before the court is plaintiff's December 12, 2022 request for clarification regarding whether he should file a supplemental complaint. (ECF No. 26.)

This action proceeds on the original complaint against defendants Tabor and Hibbard. (ECF Nos. 1, 11.) Plaintiff alleges that on February 5, 2020, defendants used excessive force against plaintiff. (*Id.*) Plaintiff also alleges that defendants solicited a white prisoner to attack plaintiff. (*Id.*)

In the pending request, plaintiff alleges that he has new evidence against defendant Tabor. (ECF No. 26.) Plaintiff alleges that while plaintiff was housed in the COVID-19 isolation unit, plaintiff was near death for a few days. (*Id.*) Plaintiff alleges that defendant Tabor drugged and poisoned plaintiff, assaulted plaintiff, and re-infected plaintiff with COVID-19. (*Id.*) Plaintiff seeks information regarding whether he can add these new claims against defendant Tabor to the

1 pending action or whether he must file a new action with these new claims. (Id.)

2 Federal Rule of Civil Procedure 15(d) provides the mechanism for supplemental pleading:

3 Upon motion of a party the court may, upon reasonable notice and
4 upon such terms as are just, permit the party to serve a supplemental
5 pleading setting forth transactions or occurrences or events which
6 have happened since the date of the pleading sought to be
7 supplemented.


8 Fed.R.Civ.P. 15(d).

9 “While leave to permit supplemental pleading is ‘favored,’” Planned Parenthood of
10 Southern Arizona v. Neely, 130 F.3d 400, 402 (9th Cir. 1997) (quoting Keith v. Volpe, 858 F.2d
11 467, 473 (9th Cir. 1988)), “it cannot be used to introduce a ‘separate, distinct and new cause of
12 action.’” Id. (quoting Berssenbrugge v. Luce Mfg. Co., 30 F.Supp. 101, 102 (D.Mo.1939)); see
13 also, 6A Charles Alan Wright, Arthur R. Miller, & Mary Kay Kane, Federal Practice and
14 Procedure: Civil 2D § 1509 (1990) (noting that leave to file a supplemental pleading will be
15 denied where “the supplemental pleading could be the subject of a separate action”).

16 If plaintiff’s new claims against defendant Tabor are unrelated to the claims against
17 defendant Tabor on which this action now proceeds, they should be raised in a separate action.
18 However, the undersigned would need to review plaintiff’s proposed supplemental complaint in
19 order to make a final determination regarding this matter.

20 Accordingly, IT IS HEREBY ORDERED that plaintiff’s request for clarification (ECF
21 No. 26) is deemed resolved.

22 Dated: January 4, 2023

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24 KENDALL J. NEWMAN
25 UNITED STATES MAGISTRATE JUDGE
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